

BEFORE THE  
POLLUTION CONTROL HEARINGS BOARD  
STATE OF WASHINGTON

IN THE MATTER OF )  
RICHARD I. MOTHERSHEAD, )  
Appellant, )  
v. )  
PUGET SOUND AIR POLLUTION )  
CONTROL AGENCY, )  
Respondent. )

PCHB No. 741

FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER

This matter, the appeal of a \$250 civil penalty for an alleged open-burning violation of respondent's Regulation I, came before the Pollution Control Hearings Board, Chris Smith, Chairman, at a formal hearing in Lacey on July 9, 1975. David Akana, Hearings Examiner, presided.

Appellant appeared pro se; respondent appeared by and through its attorney, Keith D. McGoffin. Jenni Rowland, Olympia court reporter, recorded the proceeding.

Witnesses were sworn and testified. Exhibits were admitted.

Having heard the testimony, having examined the exhibits,

1 having considered the contentions of the parties, and the Board having  
2 received exceptions to its proposed Order, and having considered said  
3 exceptions and, having denied same, and having fully satisfied itself  
4 in all respects; now therefore the Pollution Control Hearings Board makes  
5 the following

6 FINDINGS OF FACT

7 I.

8 Respondent, pursuant to Section 5, chapter 69, Laws of 1974, 3d  
9 Ex. Sess. (RCW 43.21B.260), has filed with this Board a certified copy  
10 of its Regulation I containing respondent's regulations and amendments  
11 thereto.

12 II.

13 Section 9.02 of respondent's Regulation I makes it unlawful to  
14 cause or allow an outdoor fire without approval or for the purpose of  
15 demolition of materials. Section 3.29 of Regulation I authorizes a  
16 civil penalty of not more than \$250 for each violation of Regulation I.

17 III.

18 On October 6, 1974, respondent's inspector observed a fire on  
19 appellant's farm in Graham. After ascertaining that no permit was  
20 secured from respondent, the inspector issued Notice of Violation No. 9121  
21 by certified mail. A Notice of Civil Penalty No. 1786 assessing appellant  
22 a penalty of \$250 was thereafter imposed. This penalty is the subject  
23 matter of this appeal.

24 IV.

25 Appellant did not have a permit for the fire from either the Pierce  
26 County Fire Department No. 21, the State Department of Natural Resources  
27 or the respondent. He had previously sought permits from the fire

1 department and the Department of Natural Resources to conduct an open  
2 burn but had given up in frustration.

3 V.

4 The cedar materials in the fire came from the demolition of two  
5 chicken coops. Before the fire, appellant had made this wood available  
6 to those who wanted it.

7 VI.

8 On the day of the fire, appellant held a public sale of pigs.  
9 Numerous people visited the appellant's property. At about 4:00 p.m.,  
10 a fire was noticed coming from a pile of demolished materials. Appellant  
11 did not know how the fire had started. Appellant had a garden hose  
12 available but its use would have been futile in view of the size of the  
13 fire. However, appellant did not ask for assistance from the fire  
14 department. The fire department investigated this fire but did not  
15 extinguish it because the department had assumed that the fire was the  
16 one for which appellant had unsuccessfully sought a permit.

17 VII.

18 The Board finds that the fire was accidental and not reasonably  
19 foreseeable that others would start it.

20 VIII.

21 Any Conclusion of Law hereinafter recited which should be deemed  
22 a Finding of Fact is hereby adopted as such.

23 From these Findings, the Pollution Control Hearings Board comes to  
24 these

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27 FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER 3

1 CONCLUSIONS OF LAW

2 I.

3 The Board has jurisdiction over the parties and over the subject  
4 matter of this hearing.

5 II.

6 Appellant was not in violation of Section 9.02 of respondent's  
7 Regulation I as cited in Notice of Violation No. 9121.

8 III.

9 Any Finding of Fact which should be deemed a Conclusion of Law  
10 is hereby adopted as such.

11 Therefore, the Pollution Control Hearings Board issues this

12 ORDER

13 The assessment of the \$250 civil penalty is vacated..

14 DONE at Lacey, Washington this 12<sup>th</sup> day of November, 1975.

15 POLLUTION CONTROL HEARINGS BOARD

16 Chris Smith  
17 CHRIS SMITH, Chairman

18 W. A. Gissberg  
19 W. A. GISSBERG, Member

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21 WALT WOODWARD, Member  
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FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER

This matter, the appeal of a \$250 civil penalty for an alleged open-burning violation of respondent's Regulation I, came before the Pollution Control Hearings Board, Chris Smith, Chairman, at a formal hearing in Lacey on July 9, 1975. David Akana, Hearings Examiner, presided.

Appellant appeared pro se; respondent appeared by and through its attorney, Keith D. McGoffin. Jenni Rowland, Olympia court reporter, recorded the proceeding.

Witnesses were sworn and testified. Exhibits were admitted.

Having heard the testimony, having examined the exhibits, and

having considered the contentions of the parties, the Pollution Control Hearings Board makes the following

FINDINGS OF FACT

I.

Respondent, pursuant to Section 5, chapter 69, Laws of 1974, 3d Ex. Sess. (RCW 43.21B.260), has filed with this Board a certified copy of its Regulation I containing respondent's regulations and amendments thereto.

II.

Section 9.02 of respondent's Regulation I makes it unlawful to cause or allow an outdoor fire without approval or for the purpose of demolition of materials. Section 3.29 of Regulation I authorizes a civil penalty of not more than \$250 for each violation of Regulation I.

III.

On October 6, 1974, respondent's inspector observed a fire on appellant's farm in Graham. After ascertaining that no permit was secured from respondent, the inspector issued Notice of Violation No. 9121 by certified mail. A Notice of Civil Penalty No. 1786 assessing appellant a penalty of \$250 was thereafter imposed. This penalty is the subject matter of this appeal.

IV.

Appellant did not have a permit for the fire from either the Pierce County Fire Department No. 21, the State Department of Natural Resources or the respondent. He had previously sought permits from the fire department and the Department of Natural Resources to conduct an open burn but had given up in frustration.

FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER

V.

The cedar materials in the fire came from the demolition of two chicken coops. Before the fire, appellant had made this wood available to those who wanted it.

VI.

On the day of the fire, appellant held a public sale of pigs. Numerous people visited the appellant's property. At about 4:00 p.m., a fire was noticed coming from a pile of demolished materials. Appellant did not know how the fire had started. Appellant could not extinguish the fire, but did not ask for assistance from the fire department. The fire department investigated this fire but did not extinguish it because the department had assumed that the fire was the one for which appellant had unsuccessfully sought a permit.

VII.

The Board finds that the fire was accidental and not reasonably foreseeable.

VIII.

Any Conclusion of Law hereinafter recited which should be deemed a Finding of Fact is hereby adopted as such.

From these Findings, the Pollution Control Hearings Board comes to these

CONCLUSIONS OF LAW

I.

The Board has jurisdiction over the parties and over the subject matter of this hearing.

FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER

1 II.

2 Appellant was not in violation of Section 9.02 of respondent's  
3 Regulation I as cited in Notice of Violation No. 9121.

4 III.

5 Any Finding of Fact which should be deemed a Conclusion of Law  
6 is hereby adopted as such.

7 Therefore, the Pollution Control Hearings Board issues this

8 ORDER

9 The assessment of the \$250 civil penalty is vacated.

10 DONE at Lacey, Washington this 28<sup>th</sup> day of July, 1975.

11 POLLUTION CONTROL HEARINGS BOARD

12 Chris Smith  
13 CHRIS SMITH, Chairman  
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FINDINGS OF FACT,  
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